

DAIRY AMERICA, INC.,)	AGBCA No. 2001-169-1
)	
Appellant)	
)	
Representing the Appellant:)	
)	
Annette Smith)	
Dairy America, Inc.)	
4874 E. Clinton Way, #C-221)	
Fresno, California 93727-1520)	
)	
Representing the Government:)	
)	
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DECISION OF THE BOARD OF CONTRACT APPEALS

December 20, 2001

Before POLLACK, VERGILIO, and WESTBROOK, Administrative Judges.

Opinion for the Board by Administrative Judge VERGILIO.

On August 24, 2001, Dairy America, Inc., of Fresno, California (contractor), filed this appeal with the Board, involving a contract, No. VDPM01710, to provide non-fat dry milk to the respondent, the U. S. Department of Agriculture, Commodity Credit Corporation (CCC). The contractor disputes the conclusion of the contracting officer that one shipment under the contract was short-shipped and that the contractor is obligated to return \$946.33.

A clause in the contract states that when a dispute arises concerning the quantity of commodity loaded, and railcars arrive with seals intact, the consignee's receipt will be accepted by the contractor as representing the quantity of the commodity loaded and shipped. The Government relies upon the consignee's count of product at the time of unloading of a railcar which arrived with seals intact. The contractor maintains that weight certificates demonstrate that the delivery was not short-shipped.

The Board has jurisdiction over this timely-filed appeal pursuant to the Contract Disputes Act (CDA), 41 U.S.C. §§ 601-613, as amended. The Government has filed a motion for summary judgment, maintaining that it is entitled to relief given the contract clause and the undisputed facts. In response, the contractor states that the “discrepancy in this situation is small enough to be reasonably possible and we will not continue to contest the charge of \$946.33.”

DECISION

For the reasons expressed in the opinion issued this same day, Dairy America, Inc., AGBCA No. 2001-167-1, the Board grants the motion of the Government and denies this appeal.

JOSEPH A. VERGILIO

Administrative Judge

Concurring:

HOWARD A. POLLACK

Administrative Judge

ANNE W. WESTBROOK

Administrative Judge

**Issued at Washington, D.C.
December 20, 2001**